S.B.Civil First Appeal No.43/1982

Anil Kumar and others.
vs.
Madan Lal and others.

Date : 5.1.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SG Ojha, for the appellants.
Mr.MA Naushad for Mr.M Shishodia, for the respondents.

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Heard learned counsel for the parties on application filed under Order 22 Rule 4 read with Order 22 Rule 9 CPC along with application filed under Section 5 of the Limitation Act.

The plaintiffs/appellants have submitted these applications stating therein that the respondent no.1/defendant no.1 who is the only contesting defendant expired on 21.11.1994. The respondent no.3, real brother of appellants, died on 1.6.1995. The appellants prayed that the legal representatives of respondent no.1 Madan Lal and respondent no.3 Shyam Sunder be taken on record. The applications have been filed on 21.8.1995 in the Court. The only ground for

condonation of delay and setting aside of abatement of appeal due to death of respondent no.1 is that the appellant no.1 was residing at Chittorgarh, the appellant no.2 was residing at Hanumangarh and the appellant no.3 was residing at Jaipur and on occasion of Raksha Bandhan festival on 10.8.1995, when the appellants went to meet with their relations, they came to know about the death of respondent no.1 and, therefore, the appellants submitted applications immediately thereafter on 21.8.1995.

A reply to the said applications has been filed on behalf of legal representatives of respondent no.1 stating therein that the deceased respondent no.1 is real uncle of the appellants and all the appellants were present at the time of funeral of deceased Madan Lal. Not only this, the appellant no.1 took part in last rights of the Madan Lal. Not only this, after the death of Madan Lal, legal representatives of respondent no.1 in another suit wherein the appellants are all parties, submitted an application under Order 22 Rule 3 CPC on 18.1.1995 and copy of application was given to learned counsel for appellant no.1 Anil Kumar in the said suit and in that suit, that application was allowed by the Court by order dated 28.4.1995, therefore, from the day of death of the respondent no.1, the appellants had knowledge and it cannot be

believed that the appellants would not know about the death of their real uncle for eight months. It is also submitted that even if the appellant no.1 was residing at Chittorgarh, even then, the distance between Chittorgarh and Bhilwara is so short that it cannot be believed that he did not travel to Bhilwara for about nine months. It is also submitted that the plea taken by the appellants is absolutely false as well as contrary to the proceedings in the Court of law and, therefore, both the applications deserve to be dismissed.

I considered the submissions of learned counsel for the parties.

It is not in dispute that the respondent no.1 is the only contesting respondent/defendant and he died on 21.11.1994. The respondent no.1 is the real uncle of the appellants. It cannot be believed that the appellants had no knowledge of the death of the respondent no.1 – their real uncle upto 10.8.1995 and they could come to know about the same only when they visited their relatives residence on occasion of Raksha Bandhan. It is worthwhile to mention here that the houses of both the parties appear to be on one piece of land with separate accommodations. In addition to the above, the legal representatives of respondent no.1

themselves submitted application in another suit due to death of respondent no.1 in the month of January, 1995 and on that application, the legal representatives of the respondent no.1 were taken on record in the knowledge of the appellants.

In view of the above, the appellants not only failed to explain sufficient reason for condonation of delay but it appears that the plea taken by the appellants is absolutely false.

In view of the above, the application filed under Section 5 of the Limitation Act as well as the application filed under Order 22 Rule 4 read with Order 22 Rule 9 CPC are hereby rejected.

Consequently, this first appeal is dismissed as abated.

(PRAKASH TATIA), J.

S.Phophaliya